

**FEDERAL ADVISORY COMMITTEE (FAC) MEMBERSHIP BALANCE PLAN**

**1. FEDERAL ADVISORY COMMITTEE NAME**

*State the legal name of the FAC.*

National Domestic Communications Assistance Center (NDCAC) Executive Advisory Board (EAB).

**2. AUTHORITY**

*Identify the authority for establishing the FAC.*

The establishment of the EAB is approved at the discretion of the Attorney General.

**3. MISSION/FUNCTION**

*Describe the mission/function of the FAC.*

The NDCAC is the national center established by the Department of Justice to leverage the research and development efforts of the law enforcement community with respect to lawful electronic surveillance capabilities, facilitate the sharing of technology between law enforcement agencies, advance initiatives to implement solutions that comply with the Communications Assistance for Law Enforcement Act (CALEA) and build more effective relations with the communications industry. The NDCAC is intended to assist the law enforcement community in closing the intercept capability gap. The purpose of the NDCAC Executive Advisory Board (EAB) is to identify the concerns and interests of federal, state, local and tribal law enforcement to provide advice and recommendations to the Attorney General and the Director of the NDCAC that will promote public safety and national security by advancing the NDCAC's functions and objectives, including engaging industry to address identified issues of concern to law enforcement.

Specifically, the EAB will provide advice and recommendations to the Attorney General (or his/her designee) on: 1) the selection and appointment of the Director and Deputy Director of the NDCAC; 2) trends and developments with respect to existing and emerging communications services and technologies; 3) technical challenges faced by Federal, State, local, and tribal law enforcement agencies with respect to lawfully-authorized electronic surveillance capabilities, evidence collection on communications devices, and technical location capabilities; 4) the effective leveraging and exchange of technical information and methods among Federal, State, local, and tribal law enforcement agencies regarding lawfully-authorized electronic surveillance capabilities, evidence collection on communications devices, and technical location capabilities; 5) relations between law enforcement agencies and the communications industry to include leveraging existing and/or developing new private/public partnerships; 6) the development of standard practices within the law enforcement community; 7) implementation of the Communications Assistance for Law Enforcement Act (CALEA); and 8) security and privacy policies, standards for participation by law enforcement

agencies, and other issues relating to the functions, programs and operations of the NDCAC.

The EAB will further assist in shaping the goals and mission of the NDCAC by providing advice and guidance to the Director of the NDCAC on the establishment of policies and procedures. The Board will provide insight into the diverse nature of jurisdiction-specific statutes and agency policies and procedures under which NDCAC participating law enforcement agencies operate. The Board also will receive information to review, monitor, and track training provided by or for NDCAC participating law enforcement agencies as well as recommend the development of standard practices for automated capabilities involving industry assistance.

#### **4. POINTS OF VIEW**

*Based on understanding the purpose of the FAC,*

*(a) describe the process that will be used to ensure the committee is balanced, and identify the categories (e.g. individual expertise or represented interests) from which candidates will be considered; (b) consider identifying an anticipated relative distribution of candidates across the categories; and (c) explain how a determination was made to appoint any individuals as Special Government Employees or Representative members.*

- (a) The FAC will be composed of members whose backgrounds reflect a broad range of law enforcement expertise and interests. The FAC will include a variety of executives and officials from Federal and State law enforcement agencies, as well as from local and tribal law enforcement organizations from both large and small jurisdictions. The FAC members from law enforcement agencies will have had responsibility for or will have been substantially engaged in the management of electronic surveillance capabilities, evidence collection on communications devices, and technical location capabilities. The FAC will also include a prosecutor from the State or local level.

The balance of the FAC is ensured by specific Charter requirements that mandate Board seats be reserved for individuals from each of these constituencies. Moreover, the process for selecting members of the FAC is based on obtaining nominations from Federal law enforcement agencies as well as associations of Chiefs of Police, Sheriffs, officers, and prosecutors, thereby ensuring the input of a broad spectrum of the law enforcement community. In addition, the FAC will include a DOJ legal advisor and an advisor regarding privacy, civil rights, and civil liberties. These additional non-voting members will further ensure the balance of the Board with respect to discussion of various issues regarding electronic surveillance.

- (b) The proposed charter specifies the distribution of members according to various experiences and affiliations to ensure balance. The NDCAC EAB will consist of 15 members composed of eight State, local, and/or tribal representatives and seven Federal representatives.

With respect to the balance within the Federal representatives, six seats are apportioned to the following: the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE); the Drug Enforcement Administration (DEA); the Federal Bureau of Investigation (FBI); Immigration and Customs Enforcement (ICE); the United States Secret Service (USSS); and the United States Marshals Service (USMS). The seventh Federal seat is reserved for a representative of any Federal law enforcement agency. The rationale behind this distribution of seats was to ensure a balanced variety of viewpoints from Federal law enforcement as different agencies have different technical capabilities, needs, and equities.

A similar balance was designed into the representation of State, local, and tribal law enforcement. Seven seats are for law enforcement officers who are agency heads such as a Chief of Police, Police Commissioner, Sheriff, Colonel, Superintendent, or other officially designated executive for State, local, or tribal law enforcement. Of these, one Board member must be an executive from a law enforcement agency serving a jurisdiction of less than 500,000 persons, and a second Board member must be an executive from a statewide law enforcement agency. An eighth seat shall be reserved for a prosecutor from the State or local level. The members filling the State, local, and tribal EAB seats will be appointed to provide independent advice, based on both their technical expertise and their knowledge of the practical implications for State, local, or tribal law enforcement agencies relative to the problems and issues to be addressed by the NDCAC.

The NDCAC EAB will also have two Ex Officio non-voting members: a DOJ attorney assigned full-time to the NDCAC to serve as a legal advisor to the Board, and the DOJ Chief Privacy Officer or his/her designee to ensure that privacy and civil rights and civil liberties issues are fully considered in the Board's recommendations.

- (c) Each State, local, and tribal member of the EAB will be a Special Government Employee (SGE). EAB members will be SGEs to allow each member to offer the FAC the full benefit of his/her expertise working in different law enforcement positions and agencies, and participating in related law enforcement associations, by providing his/her independent opinion for the benefit of the law enforcement community, rather than providing only the opinion of the entity that he/she represents or for which he/she works.

## **5. OTHER BALANCE FACTORS**

*List any other factors your agency identifies as important in achieving a balanced FAC.*

Not applicable.

## **6. CANDIDATE IDENTIFICATION PROCESS**

*Summarize the process intended to be used to identify candidates for the FAC, key resources expected to be tapped to identify candidates and the key persons (by position, not name) who will evaluate FAC balance. The summary should: (a) describe the process; (b) identify the agency key staff involved (by position, not name); (c) briefly describe how FAC vacancies, if any, will be handled by the agency; and (d) state the membership term limit of FAC members, if applicable.*

- (a) For the initial selection of the Board, the Attorney General will solicit nominations to the EAB from Federal law enforcement agencies, from the national professional organizations representing State, local, and tribal law enforcement agencies and prosecuting attorneys that are identified in the Charter, and from such other sources as the Attorney General shall designate. The Attorney General's solicitation will request a cover letter, resume/curriculum vitae, a nomination from the sponsoring organization, and a statement of support from the individual's employer, all of which should speak to the individual's experience in the following areas: lawfully authorized electronic surveillance capabilities, evidence collection on communications devices, and technical location capabilities. In addition, regarding these three areas, the application materials will address the applicant's experience with the relationship between law enforcement agencies and industry, the development of law enforcement standards, the implementation of CALEA, and security and privacy policies.

The NDCAC staff will categorize each nominee as to the seat(s) for which he/she appears to be eligible based on whether the nominee satisfies the applicable affiliation and demographic requirements of the Charter. The NDCAC staff will then provide the application materials to a panel of the Law Enforcement Executive Forum (LEEF) and also to the Attorney General.

Each LEEF member on the panel (representing various law enforcement constituencies) will be provided the opportunity to submit his/her recommendations and comments to the Attorney General about the experience and technical qualifications of each nominee relating to the NDCAC's mission, the ability of the nominee to contribute to the expertise and diversity of perspective of the NDCAC's Board, the balance of the Board with respect to different perspectives, work experiences, geographic and demographic considerations, and types of technical or professional expertise, given the pool of nominees, and a description of the viewpoints and interests that would not be adequately represented by a Board comprised only of individuals in the pool of nominees.

The Attorney General shall review the recommendations and comments provided by members of the LEEF panel and make his/her final selection of EAB members.

- (b) The Attorney General will appoint replacement Board members when vacancies occur, consistent with the Charter's requirements regarding the demographics of EAB membership.
- (c) Board members will be appointed for a 2-year term, and will be eligible for reappointment.

**7. SUBCOMMITTEE BALANCE**

*Subcommittees subject to FACA\* should either state that the process for determining FAC member balance on subcommittees is the same as the process for the parent FAC, or describe how it is different.*

*\*This is relevant to those agencies that require their subcommittees to follow all FACA requirements.*

The NDCAC EAB subcommittees work will not be subject to the balancing requirements of the FACA because the subcommittees will in all instances report to the EAB as a whole and not directly to the Department of Justice. To the extent that the balancing requirements do apply, subcommittee members will be chosen based on the same basis of technical and experiential expertise as the members of the EAB.

**8. OTHER**

*Provide any additional information that supports the balance of the FAC.*

Not applicable.

**9. DATE PREPARED/UPDATED**

*Insert the actual date the Membership Balance Plan was initially prepared, along with the date(s) the Plan is updated.*

April 20, 2016